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ABSTRACT

In 1964, Congress passed Public Law 82-352. This civil rights act forbade hiring, promoting, and firing discrimination based on sex or race. Title VII of the act created the Equal Employment Opportunity Commission (EEOC) to implement the law. Subsequent legislation expanded the role of the EEOC. Today, the EEOC enforces laws that prohibit discrimination based on race, color, religion, sex, national origin, disability, or age in hiring, promoting, firing, setting wages, testing, training, apprenticeship, and all other terms and conditions of employment. Working with state and local programs, the EEOC processes 48,000 claims annually. This lesson relates to the Preamble, to Article I, which establishes the president's power to issue executive orders; to Article III, which establishes the jurisdiction of the courts; and to the 14th Amendment which guarantees equal protection of the laws. As the primary source document, the lesson uses the Civil Rights Act of 1964 (pages 1-8.) The lesson correlates to the National History Standards and to the National Standards for Civics and Government. It provides historical background about the act and an overview of the debate about the term "affirmative action" (with two resources). It suggests diverse teaching activities for classroom implementation, including document analysis, research and discuss, design and construct a poll, and a research and jigsaw activity. The document is appended. (BT)

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THE CONSTITUTION COMMUNITY

Contemporary United States (1968 to the present)

The Civil Rights Act and the Equal Employment Opportunity Commission

By Linda Simmons

SO 033 610

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The Constitution Community is a partnership between classroom teachers and education specialists from the National Archives and Records Administration. We are developing lessons and activities that address constitutional issues, correlate to national academic standards, and encourage the analysis of primary source documents. The lessons that have been developed are arranged according to historical era.

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The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission

Eighty-eighth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the seventh day of January, one thousand nine hundred and sixty-four

Constitutional Connection

This lesson relates to the Preamble ; to Article I , which establishes Congress's power to legislate; to Article II , which establishes the president's power to issue executive orders; to Article III , which establishes the jurisdiction of the courts; and to the 14th Amendment which guarantees equal protection of the laws.

This lesson correlates to the National History Standards.

Era 9 -Postwar United States (1945 to early 1970s)

- **Standard 4B** -Demonstrate understanding of the women's movement for civil rights and equal opportunities.

Era 10 -Contemporary United States (1968 to the present)

- **Standard 1A** -Demonstrate understanding of domestic politics from Nixon to Carter.

This lesson correlates to the National Standards for Civics and Government.

Standard II.C.2. -Describe the character of American political conflict and explain factors that usually tend to prevent it or lower its intensity.

Standard II.D.3. -Evaluate, take and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy.

Standard II.D.4. -Evaluate, take, and defend positions on issues in which fundamental values and principles may be in conflict.

Standard II.D.5. -Evaluate, take, and defend positions about issues concerning the disparities between American ideals and realities.

Cross-curricular Connections

Please share this exercise with your colleagues who teach government, history, women's studies, and minority studies.

List of Documents

1. Civil Rights Act of 1964 (page 1 , page 2 , page 3 , page 4 , page 5 , page 6 , page 7 , page 8)

Historical Background

In the 1960s, Americans who knew only the potential of "equal protection of the laws" expected the president, the Congress, and the courts to fulfill the promise of the 14th Amendment. In response, all three branches of the federal government--as well as the public at large--debated a fundamental constitutional question: Does the Constitution's prohibition of denying equal protection always ban the use of racial, ethnic, or gender criteria in an attempt to bring social justice and social benefits?

In 1964 Congress passed Public Law 82-352 (78 Stat. 241). The provisions of this civil rights act forbade discrimination on the basis of sex as well as race in hiring, promoting, and firing. The word "sex" was added at the last moment. According to the *West Encyclopedia of American Law* , Representative Howard W. Smith (D-VA) added the word. His critics argued that Smith, a conservative Southern opponent of federal civil rights, did so to kill the entire bill. Smith, however, argued that he had amended the bill in keeping with his support of Alice Paul and the National Women's Party with whom he had been working. Martha W. Griffiths (D-MI) led the effort to keep the word "sex" in the bill. In the final legislation, Section 703 (a) made it unlawful for an employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges or employment, because of such individual's race, color, religion, sex, or national origin." The final bill also allowed sex to be a consideration when sex is a bona fide occupational qualification for the job. Title VII of the act created the Equal Employment Opportunity Commission (EEOC) to implement the law.

Subsequent legislation expanded the role of the EEOC. Today, according to the *U. S. Government Manual of 1998-99* , the EEOC enforces laws that prohibit discrimination based on race, color, religion, sex, national origin, disability, or age in hiring, promoting, firing, setting wages, testing, training, apprenticeship, and all other terms and conditions of employment. Race, color, sex, creed, and age are now protected classes. The proposal to add each group to protected-class status unleashed furious debate. But no words stimulate the passion of the debate more than "affirmative action."

As West defines the term, affirmative action "refers to both mandatory and voluntary programs intended to affirm the civil rights of designated classes of individuals by taking positive action to protect them" from discrimination. The issue for most Americans is fairness: Should the equal protection clause of the 14th Amendment be used to advance the liberty of one class of individuals for good reasons when that action may infringe on the liberty of another?

The EEOC, as an independent regulatory body, plays a major role in dealing with this issue. Since its creation in 1964, Congress has gradually extended EEOC powers to include investigatory authority, creating conciliation programs, filing lawsuits, and conducting voluntary assistance programs. While the Civil Rights Act of 1964 did not mention the words affirmative action, it did authorize the bureaucracy to makes rules to help end discrimination. The EEOC has done so.

Today the regulatory authority of the EEOC includes enforcing a range of federal statutes prohibiting employment discrimination. According to the EEOC's own Web site [http://www.eeoc.gov/], these include Title VII of the Civil Rights Act of 1964 that prohibits employment discrimination on the basis of race, color, religion, sex, or national origin; the Age Discrimination in Employment Act of 1967, and its amendments, that prohibits employment discrimination against individuals 40 years of age or older; the Equal Pay Act of 1963 that prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions; Title I of the Americans with Disabilities Act of 1990 that prohibits employment discrimination on the basis of disability in both the public and private sector, excluding the federal government; the Civil Rights Act of 1991 that provides for monetary damages in case of intentional discrimination; and Section 501 of the Rehabilitation Act of 1973, as amended, that prohibits employment discrimination against federal employees with disabilities. Title IX of the Education Act of 1972 forbade gender discrimination in education programs, including athletics that received federal dollars. In the late 1970s Congress passed the Pregnancy Discrimination Act. This made it illegal for employers to exclude pregnancy and childbirth from their sick leave and health benefits plans.

Presidents also weighed in, employing a series of executive orders. President Lyndon B. Johnson ordered all executive agencies to require federal contractors to "take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, or national origin." This marked the first use of the phrase "affirmative action." In 1969 an executive order required that every level of federal service offer equal opportunities for women and established a

program to implement that action. President Richard Nixon's Department of Labor adopted a plan requiring federal contractors to assess their employees to identify gender and race and to set goals to end any under-representation of women and minorities. By the 1990s Democratic and Republican administrations had taken a variety of actions that resulted in 160 different affirmative action federal programs. State and local governments were following suit.

The courts also addressed affirmative action. In addition to dealing with race, color, creed, and age, from the 1970s forward, the court dealt with gender questions. It voided arbitrary weight and height requirements (*Dothard* v. *Rawlinson*), erased mandatory pregnancy leaves (*Cleveland Board of Education* v. *LaFleur*), allowed public employers to use carefully constructed affirmative action plans to remedy specific past discrimination that resulted in women and minorities being under-represented in the workplace (*Johnson* v. Transportation Agency, Santa Clara County), and upheld state and local laws prohibiting gender discrimination.

By the late 1970s all branches of the federal government and most state governments had taken at least some action to fulfill the promise of equal protection under the law. The EEOC served as the agent of implementation and complaint. Its activism divided liberals and conservatives, illuminating their differing views about the proper scope of government. In general, the political liberals embraced the creation of the EEOC as the birth of a federal regulatory authority that could promote the goal of equality by designing policies to help the historically disadvantaged, including women and minorities. In contrast, political conservatives saw the EEOC as a violation of their belief in fewer government regulations and fewer federal policies. To them, creating a strong economy, free from government intervention, would produce gains that would benefit the historically disadvantaged. Even the nonideological segment of the American population asked: What should government do, if anything, to ensure equal protection under the law?

In fiscal year 1997, the EEOC collected $111 million dollars in financial benefits for people who filed claims of discrimination. Its recent successful efforts include a $34 million settlement in a sexual harassment case with Mitsubishi Motor Manufacturing of America, resulting in the company's adoption of changes to its sexual harassment prevention policy . Working with state and local programs, the EEOC processes 48,000 claims annually.

Resources

The Equal Employment Opportunity Commission Web site (www.eeoc.gov).

Clark, Charles. "Sexual Harassment: Men and Women in Workplace Power Struggles." Available on SIRS Researcher on the Web at: http://researcher.sirs.com/cgi-vin/artselect?6EA063A (Boca Raton, FLA: SIRS, 15 June 1996).

Teaching Activities

Introductory Exercises

1. Ask students what they think the term "affirmative action" means. Share with them the information from the Historical Background about President Johnson's use of the term.

2. Locate and bring to class examples of job applications, student handbooks, and college applications. Distribute them to students and direct each student to examine the items for any statement related to the implementation of affirmative action. Ask 4 or 5 students to describe the items and read any statement of affirmative action. Ask students if they know why such statements appear on the forms. Inform them that prior to July 2, 1964, such items would not have contained such statements.

Document Analysis

3. Divide students into 8 small groups and provide each group a copy of one of the pages of the featured document. Ask each group to read its page and record the main points. Lead a class discussion on the Civil Rights Act of 1964 by directing one representative from each group to report to the class on the contents of that page. Ask students what the act did and what provisions were included for its enforcement. Also ask students if they think Congress was overly careful in defining terms and why Section 702 included specific definitions.

Research and Discuss

4 . Divide students into 4 groups, one to focus on the 1960s, one on the 1970s, one on the 1980s, and one on the 1990s. Require each group to conduct research and design a table "Toward Gender Equality: Public Policy Milestones." Direct them to include congressional, presidential, and judicial actions. Ask students to post tables to each other electronically, using e-mail, or ask one representative from each group to present the group's table to the class. Conclude this activity by either
a. Directing student groups to write an essay, using information from the tables, about how congressional, presidential, and judicial actions taken during the past four decades have influenced gender equality in the workforce, or
b. Leading a class discussion on the issues and actions students expect will dominate the next decade. A possible example is women in the military.

Design and Construct a Poll

5. Divide students into two groups and assign each the task of drafting questions for a public opinion poll to determine public attitudes toward affirmative action. Lead a discussion of the questions. Ask: Is each question clear? Is there more than one interpretation? Is there bias? Select the five best questions. Require each student to poll 10 people. For a sample of a poll on this subject, see Gallup, March 1995. Annual

published editions of Gallup polls are available in most public and college libraries. Ask students to report their findings to the class.

Research and Jigsaw Activity

6. Inform students that in addition to enforcing the Civil Rights Act of 1964, the EEOC enforces other federal statutes prohibiting discrimination. Provide them a list of the statutes listed in the background essay. Divide students into 8 groups. Direct each group to research their assigned statute and find out what it requires of employers. Direct them to share their information using the jigsaw method.

The document included in this project is from Record Group 11, General Records of the U.S. Government. It is available online through the National Archives Information Locator (NAIL) [http://www.nara.gov/nara/nail.html] database, control number NWCTB-11-LAWS-P1159E6-PL88(352). NAIL is a searchable database that contains information about a wide variety of NARA holdings across the country. You can use NAIL to search record descriptions by keywords or topics and retrieve digital copies of selected textual documents, photographs, maps, and sound recordings related to thousands of topics.

This article was written by Linda Simmons, an associate professor at Northern Virginia Community College in Manassas, VA.

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GENERAL SERVICES ADMINISTRATION RECEIVED JUL 6 1964 NATIONAL ARCHIVES AND RECORDS SERVICE

Eighty-eighth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the seventh day of January, one thousand nine hundred and sixty-four

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

TITLE I—VOTING RIGHTS

SEC. 101. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and as further amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), is further amended as follows:

(a) Insert "1" after "(a)" in subsection (a) and add at the end of subsection (a) the following new paragraphs:

"(2) No person acting under color of law shall—

"(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

"(B) deny the right of any individual to vote in any Federal election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

"(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974–74e; 74 Stat. 88): *Provided, however*, That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

"(3) For purposes of this subsection—

"(A) the term 'vote' shall have the same meaning as in subsection (e) of this section;

"(B) the phrase 'literacy test' includes any test of the ability to read, write, understand, or interpret any matter."

(b) Insert immediately following the period at the end of the first sentence of subsection (c) the following new sentence: "If in any such proceeding literacy is a relevant fact there shall be a rebuttable

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(b) The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

TITLE III—DESEGREGATION OF PUBLIC FACILITIES

SEC. 301. (a) Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 401 of title IV hereof, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

SEC. 302. In any action or proceeding under this title the United States shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

SEC. 303. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this title.

SEC. 304. A complaint as used in this title is a writing or document within the meaning of section 1001, title 18, United States Code.

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

DEFINITIONS

SEC. 401. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

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ing on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hun-

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dred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers: *Provided further*, That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex or national origin and the President shall utilize his existing authority to effectuate this policy.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 716, (B) seventy-five or more during the second year after such date or fifty or more during the third year, or (C) twenty-five or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an

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industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution.

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any

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way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

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(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on reli-

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TITLE XI—MISCELLANEOUS

SEC. 1101. In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

SEC. 1102. No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or omission.

SEC. 1103. Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

SEC. 1104. Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

SEC. 1105. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 1106. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

John W. McCormack

Speaker of the House of Representatives.

Carl Hayden

President pro tempore of the Senate.

Lyndon B. Johnson

Approved July 2, 1964

Washington, D.C.